

PT 04-45

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MAGIC
FOUNDATION,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 03-PT-0092
(02-16-2872)
P.I.N.S: 16-06-202-001

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. George W. Foster, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter raises the limited issue of whether 50% of real estate identified by Cook County Parcel Index Number 16-06-202-001 (the “subject property”) was “actually and exclusively used for charitable or beneficent purposes,” as required by 35 ILCS 200/15-65(a), during the 54% of the 2002 tax year that commenced on June 18, 2002 and ended on December 31, 2002. The underlying controversy arises as follows:

Applicant filed a *pro se* Real Estate Tax Exemption Complaint with the Cook County Board of Review (the “Board”), which, after its review of this matter, recommended that a partial exemption be granted.¹ The Department then issued its initial determination in this matter on November 13, 2003, finding that: (1) 50% of the subject

property qualified for exemption from real estate taxation for 54% of the 2002 assessment year under 35 ILCS 15-65(a); but, (2) the remaining 50% of this property did not qualify for such exemption due to lack of exempt use.

The applicant filed a *pro-se* appeal as to the portion of the property that was denied exemption² and later, appearing *pro-se*, presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the portion in dispute is not in exempt use. *Id.*
3. The subject property is located in Oak Park, IL and improved with a two-story office building. *Id.*
4. The applicant, an Illinois not for profit corporation organized for purposes of providing support and education to families of children with growth disorders, obtained ownership of the subject property on June 18, 2002. *Id.*; Tr. pp. 8, 13, 14, 36-40.
5. After it obtained ownership of the subject property, the applicant used the top or second floor of the building improvement for office space. This office space, which

1. The exact nature of the partial exemption that the Board recommended is not clear from the record because one commissioner dissented and the recommendation made by the other two commissioners is illegible. *See*, Dept. Group Ex. No. 1.

2. This portion of the property shall hereinafter be referred to as the "portion in dispute."

occupies 50% of the building improvement as a whole, is not in dispute herein because it is already exempt under terms of the Department's initial determination in this matter. *Id.*; Tr. pp 7-9.

6. The remaining 50% of the building improvement, which is currently in dispute, was the site that the applicant intended for use as the "New Heights Medical Clinic" (the "Clinic"),³ which was intended to provide various medical services, including blood draws, stimulation testing and medical consultations with a qualified pediatric endocrinologist, for children who demonstrate symptoms of or suffer from growth disorders. Tr. pp. 9-10, 20, 29, 47-51.
7. The Clinic did not actually open until November 8, 2003 because the applicant needed to perform substantial renovations in order to prepare the portion in dispute for use as a medical clinic. Applicant Ex. No. 1; Tr. pp. 47-51.
8. One of the necessary renovations was installing a fire wall ceiling in between the ceiling that divided the first floor from the second floor. Tr. pp. 12, 16, 21-25.
9. The Village of Oak Park (the "Village") would not allow the applicant to open the Clinic unless and until it installed this fire wall ceiling. Although the applicant could not install this fire wall ceiling until it made some major wiring repairs, it did not have sufficient financial resources to cover all of the \$40,000.00 in installation costs for the fire wall ceiling at any time during 2002. Nor did the applicant apply to the Village for a construction permit that would have authorized it to make any of the required repairs until January 23, 2003. *Id.*; Tr. p. 28.

3. The applicant did not submit any financial statements or other documents detailing the operations of the Clinic for periods during which it was open. See, *infra* at pp. 9-10.

CONCLUSIONS OF LAW:

I. CONSTITUTIONAL AND STATUTORY CONSIDERATIONS

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-15-65(a) of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*) which provides for exemption of the following:

200/15-65. Charitable purposes

15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

35 **ILCS** 200/15-65(a).

Like all statutes exempting real estate from taxation, Section 15-65(a) is to be strictly construed in favor of taxation, with all doubts and debatable questions resolved against the applicant. People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, the applicant bears the burden of proving that the property it is seeking to exempt falls within the appropriate statutory provision by a standard of clear and convincing evidence. *Id.*

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, “clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

In this case, the applicant elected to proceed *pro-se* throughout all phases of the exemption process, including the administrative hearing on its complaint, even though its authorized representatives were repeatedly advised that they were entitled to avail themselves of the assistance of counsel at any time during the proceedings. Tr. p. 4. As such, it appears that the applicant’s representatives may not have appreciated the following relevant legal technicalities:

A party seeking to exempt real estate under Section 15-65(a) must prove that the property in question is both (1) owned by a duly qualified “institution of public charity;” and, (2) “actually and exclusively” used for purposes that qualify as “charitable” during the specific tax year in question. 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968);. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980).

The Department’s initial determination in this matter reflects its judgment that the 50% of the subject property that the applicant, itself, actually used satisfies both of these

statutory requirements, at least with respect to the 54% of the 2002 assessment year⁴ that transpired on or after the date on which the applicant obtained ownership of this property, June 18, 2002. This portion of the Department's initial determination is not currently in dispute. Tr. p. 7. However, the other part of this determination, which found that the remaining 50% of the subject property was not "actually and exclusively" used for qualifying "charitable" purposes during this 54% of the 2002 assessment year, is very much in dispute.

The word "exclusively," when used in Section 15-65 and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). "Charitable or beneficent purposes" are, by definition, those that benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also carried out by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

4. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 **ILCS** 200/1-155.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

Here, the applicant clearly intended to develop the portion in dispute for use as a medical clinic to serve the needs of children with growth disorders. Such an intended use is certainly public-spirited and laudable. However, in the final analysis, the applicant's intended use is not determinative for present purposes. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Rather, the decisive factor is whether the applicant actually used the portion in dispute for qualifying "charitable" purposes during the 54% of the 2002 assessment year that is presently at issue. *Id.* For the following reasons, I conclude that it did not.

From a practical standpoint, the applicant could not effectuate its intended use of the portion in dispute without first undertaking the renovations that were necessary to transform that portion into a medical clinic. Making such renovations can constitute exempt use, but only if it is linked to an active, rather than passive, process of developing

real estate for a specifically identifiable exempt purpose. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with* People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

The development at issue in this case was passive for several reasons. First, public policy dictates that an administrative agency cannot fail to recognize or decline to enforce the otherwise valid legal constraints that govern all of the endeavors that applicant was required to undertake throughout the developmental process. This applicant could not begin even the most rudimentary phases of the renovations process unless and until it obtained an appropriate construction permit from the Village.

According to its own records, the applicant did not apply for the required permit until January 23, 2003. Applicant Ex. No. 1. Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Accordingly, the one and only state of affairs that is relevant to this proceeding is the one that transpired between the date that

the applicant assumed ownership of the subject property, July 18, 2002 and the last day of the 2002 assessment year, December 31, 2002.

The applicant did not obtain the necessary construction permit within this specific period. Consequently, it remained legally impossible for the applicant to develop or otherwise use the portion in dispute for its intended purpose throughout the period that is currently under review. Moreover, even if the applicant had obtained the permit within the relevant time frame, it still lacked the financial resources necessary to install the fire wall ceiling that the Village required.

Business reality dictates that the applicant could not fulfill this or any other construction requirements that the Village may have imposed unless it possessed sufficient financial resources to afford the required repairs. The applicant did not have the necessary financial resources, at least throughout the period currently under review. Therefore, it remained both factually and legally impossible for the applicant to actively develop the portion in dispute for its ultimate intended purpose during this period.

Most of the above analysis assumes that the applicant's ultimate use of the portion in dispute was, in fact, one that qualifies as being "exclusively used for charitable or beneficent purposes" within the meaning of Section 15-65. Although I normally do not make this assumption, I have done so in this case strictly for purposes of demonstrating that it was factually and legally impossible for the applicant to actually use and/or develop the portion in dispute for its intended purpose during the period currently under review. Therefore, as a matter of law, the portion in dispute would not be in exempt use *during this specific period* irrespective of whether the applicant's ultimate use thereof will ultimately qualify as "exclusively ... charitable" during a subsequent period.

However, it is noted that the “charitable” nature use of any future uses is speculative, and therefore unproven, on this particular record because the clinic did not actually open until November of 2003 and the applicant, which bears the burden of proving all elements of its exemption claim, (People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)), failed to submit any documents describing the clinic’s operating structure.

Based on the above, I conclude that the portion in dispute was not in exempt use during the period under review. Therefore, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, I recommend that:

- A. 50% of real estate real estate identified by Cook County Parcel Index Number 16-06-202-001 be exempt from real estate taxes for 54% of the 2002 assessment year under 5 **ILCS** 200/15-65(a); but,
- B. the remaining 50% of this real estate not be so exempt and that the taxes thereon be levied against the applicant, which owned the subject property throughout this 54% of the 2002 assessment year.

Date: 9/28/2004

Alan I. Marcus
Administrative Law Judge